

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

| | | |
|-------------------------------------|---|------------|
| Viacom International Inc., Comedy |) | |
| Partners, Country Music |) | |
| Television, Inc., Paramount |) | |
| Pictures Corporation, and Black |) | |
| Entertainment Television LLC, |) | |
| |) | |
| Plaintiffs, |) | Case No. 1 |
| |) | |
| vs. |) | 07CV02103 |
| |) | |
| YouTube, Inc., YouTube, LLC, |) | |
| and Google, Inc., |) | |
| |) | |
| Defendants. |) | |
| |) | |
| THE FOOTBALL ASSOCIATION PREMIER |) | |
| League Limited, Bourne Co., et al., |) | |
| on behalf of themselves and all |) | |
| others similarly situated, |) | |
| |) | |
| Plaintiffs, |) | Case No. 2 |
| |) | |
| vs. |) | 07CV3582 |
| |) | |
| YouTube, Inc., YouTube, LLC, and |) | |
| Google, Inc., |) | |
| Defendants. |) | |
| |) | |

DEPOSITION OF DAVID EUN
NEW YORK, NEW YORK
THURSDAY, AUGUST 7, 2008

REPORTED BY:
ERICA RUGGIERI, CSR, RPR
JOB NO. 15377

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4 August 7, 2008

5 9:36 a.m.
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7 VIDEOTAPED DEPOSITION OF DAVID EUN,
8 held at the offices of Jenner & Block,
9 919 Third Avenue, New York, New York,
10 pursuant to notice, before before Erica L.
11 Ruggieri, Registered Professional Reporter
12 and Notary Public of the State of New
13 York.
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21
22 ALSO PRESENT:

23 MANUEL ABREU, Videographer
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But let's, for now, go on to what you did
after you left Time Warner.

A. Okay.

Q. Where did you go to work next?

A. Google.

Q. And you are currently employed
by Google, correct?

A. Yes.

Q. And you started there when?

A. February 2006.

Q. And has your position -- have
your responsibilities at Google changed or
evolved over time?

A. No, I still hold the same
position.

Q. And what is that position?

A. I'm vice president of content
partnerships.

Q. And what responsibilities do you
have as vice president of content
partnerships at Google?

A. I manage groups that are
responsible for negotiating deals and
managing partnerships with owners of

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2 Video.

3 Remind me again when you first
4 began working for Google.

5 A. February 2006.

6 Q. And at that time one of your
7 areas of responsibility was content for
8 Google Video, correct?

9 A. Content partnerships for Google
10 Video, yes.

11 Q. And at that time, Google did not
12 own YouTube, correct?

13 A. Yes.

14 Q. Google Video and YouTube were
15 competitors at that time?

16 MR. MANCINI: Objection to form.

17 A. Yes, very much so.

18 Q. So you had no responsibility for
19 managing what Google -- strike that.

20 So you had no responsibility for
21 managing what YouTube was doing in
22 February 2006, when you first went to
23 Google?

24 A. I had never heard of YouTube,
25 initially. And then they became the

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2 archenemy.

3 Q. And then there came a time when
4 Google acquired YouTube; is that correct?

5 A. Yes.

6 Q. And when was that?

7 A. I think we announced it like the
8 fall of 2006, I think. Right. Yeah,
9 around the fall. And then it was approved
10 in November. I think it was right before
11 Thanksgiving.

12 Q. November 2006 it was approved?

13 A. Yeah. I think it was 2006.
14 Yes, yes.

15 Q. Okay. Let's start by focusing
16 on Google Video at the time you first went
17 to Google.

18 A. Okay.

19 Q. Can you describe the services,
20 the service or services, that Google Video
21 provided when you first began working at
22 Google?

23 A. The primary business objective,
24 you mean, of Google Video?

25 Q. Yes.

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2 A. Google Video had relationships
3 with owners of content to provide what was
4 referred to as a DTO, download to own,
5 service, where you could, as a user, you
6 could buy individual, let's say, Charlie
7 Rose episodes for a price that the owner
8 would determine, using Google proprietary
9 DRM and a Google proprietary player.

10 Q. And what is DRM?

11 A. Digital rights management.

12 Q. And can you explain what digital
13 rights management means?

14 A. Well, I'm not an engineer, but I
15 guess my, the layman's way of looking at
16 it is, if a content owner gives us content
17 to sell on their behalf, as a technology
18 partner, they would be concerned that only
19 the people who bought it would have --
20 would be able to actually view it. So the
21 DRM is basically an engineering system.
22 It's a protection scheme to fulfill that.

23 Q. It prevents additional copies,
24 above a certain number from being made?

25 A. Well, I mean those types of

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2 process is resolved, the treatment
3 will continue as designated.

4 MR. HOHENGARTEN: We are going
5 to continue to honor the "highly
6 confidential" designation. We don't
7 think it's proper, but we are going to
8 continue to honor it, pending meet and
9 confer.

10 MR. MANCINI: Of course, we
11 dispute your position that you don't
12 think it's proper, but we will meet
13 and confer.

14 BY MR. HOHENGARTEN:

15 Q. Okay. Mr. Eun, have you had a
16 chance to look at Eun Exhibit 1?

17 A. I have started reading it.

18 Q. Okay. Let me know when you've
19 had a chance to look over it.

20 A. Okay.

21 Q. Okay. And just for your
22 background, the documents that have this
23 number on the bottom which I'm calling a
24 Bates number that begins with G, in the
25 lower right-hand corner, are documents

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2 that were produced to us by Google in
3 connection with this case, so they came
4 from Google originally.

5 And Exhibit 1 is a thread of
6 e-mails, correct?

7 A. Yes.

8 Q. And the top e-mail is from you
9 to another Google employee.

10 Can you pronounce his or her
11 name?

12 A. Which one?

13 Q. Bhanu. There's two, I'm sorry.
14 Yeah, both of them.

15 A. I don't know how to pronounce
16 Bhanu's last name, but it is Bhanu
17 Narasimhan, and the second person is
18 Nikesh Arora.

19 Q. And who were they?

20 A. Bhanu worked in the ops group at
21 Google, and her team provided review of
22 video at Google Video.

23 Nikesh Arora is currently
24 president of our Europe, Middle East and
25 Africa region.

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2 Q. And you said Bhanu, I'll use the
3 first name in this case, responsibilities
4 included review of video for Google Video,
5 correct?

6 A. She didn't work for me. I don't
7 know what all her responsibilities were.

8 But I do know that part of her
9 responsibilities were to review videos.

10 Q. And on Eun Exhibit 1, the lower
11 e-mail, which would have been the first in
12 time, is an e-mail from Bhanu describing
13 that review of video process; is that
14 correct?

15 MR. MANCINI: Objection. The
16 document speaks for itself.

17 A. I don't specifically recall
18 this, but that's what it looks like.

19 Q. On the second page of Exhibit 1,
20 Bates page 923211, under "Content reviewed
21 in U.S. only," it says, "We disapprove for
22 policy, (porn, violence, et cetera) or
23 copyright," correct.

24 MR. MANCINI: Objection. The
25 document speaks for itself.

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2 A. Yes, that's what the e-mail
3 says.

4 Q. Is that consistent with your
5 understanding of Google Video's video
6 review process at the time of this e-mail?

7 MR. MANCINI: Objection to form.

8 A. Yes, it is.

9 Q. What is your understanding of
10 Google Video's process for disapproving
11 videos for copyright reasons --

12 MR. MANCINI: Objection to form.

13 Q. -- in March 2006?

14 MR. MANCINI: So Objection to
15 form, and objection to the extent it's
16 seeking legal opinion that is not
17 discoverable in this deposition.

18 I don't think you are asking for
19 that.

20 MR. HOHENGARTEN: I'm asking for
21 the process, a description of the
22 process.

23 A. So what was the question? My
24 understanding of the process at the time,
25 for a review?

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2 supervisor, who is my peer, saying, hey,
3 you know, we have got to figure this out.

4 Q. Okay. Just to clarify one thing
5 on the record. You referred to "our CEO,"
6 and that's Eric Schmidt, right?

7 A. That's right.

8 Q. And in your e-mail response,
9 which is at the top of the first page of
10 Exhibit 6, to Susan Wojcicki --

11 A. Yes.

12 Q. -- can you read the second
13 paragraph down?

14 A. In my e-mail?

15 Q. Yes.

16 A. Yes. "I also ran into Peter,
17 and he had this idea to 'beat YouTube' by
18 calling quits on our copyright compliance
19 standards."

20 Q. Was that what you were just
21 referring to as the divide in policy?

22 A. It was sort of how much over
23 DMCA compliant do we want to be? You
24 know, what's the best business decision?

25 Q. Peter here is Peter Chane, whom

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2 you mentioned before, right?

3 A. That's right. So he was in the
4 product -- he was the product manager for
5 Google Video.

6 Q. And he reported to Susan
7 Wojcicki?

8 A. Yes.

9 Q. You referred to going above what
10 your lawyer said you needed to do for DMCA
11 compliance, right?

12 MR. MANCINI: Objection to the
13 characterization of testimony.

14 A. That was always the presumption.

15 Q. Okay. And in your answer
16 previously you said, I think, that the
17 argument that we were using was, it's, you
18 know, it's not a question, with all due
19 respect to our lawyers, about what's legal
20 or not, because we are all talking about
21 within the realm of legality.

22 What was your understanding
23 about what was within the realm of
24 legality?

25 DIR MR. MANCINI: Objection, to the

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2 thinking about the legal, because that was
3 never the question about whether we
4 shouldn't be legal. In fact, the article
5 also talks about, you know, I think Google
6 has failed to take off for the simple
7 reason, because it's more annoying to use
8 than YouTube. They talked about how
9 YouTube was just easy to use.

10 So at the time, it's very much a
11 product of the Google culture, we are
12 focusing on the user to try to make it
13 simple and intuitive to use. And so our
14 focus was really on how do we create the
15 best experience for the consumers. But I
16 think, I don't know if I'm being clear,
17 but that was really the focus of the back
18 and forth.

19 Q. And going back to what you wrote
20 in your e-mail in Exhibit 6, which you
21 read aloud before, which says, "I also ran
22 into Peter and he had this idea to 'beat
23 YouTube' by calling quits on our copyright
24 compliance standards."

25 How would "calling quits on our

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2 copyright compliance standards" help
3 Google Video beat YouTube?

4 A. Well --

5 MR. MANCINI: Objection.

6 A. I believe -- I believe, if I
7 recall at the time, sometimes, you know,
8 we make the lawyers the bad cops and --
9 you know, in the company. And I think the
10 feeling was that they had put so many
11 extra, like, things for the product people
12 to do, including reviewing and taking
13 time; and so the, I think the feeling was,
14 because we are complying with these
15 standards, these, you know, standards that
16 our lawyers are adding on, it's affecting
17 our ability to provide the best service
18 possible to our users. And in fact,
19 Susan's original e-mail to Eric here talks
20 about an instant upload which will be
21 faster than YouTube.

22 So I think there was a -- I
23 don't remember, I don't recall it
24 specifically. I think there was,
25 generally there was this uneasiness about

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2 the fact that YouTube was able to share,
3 have people upload their videos and share
4 it much more quickly, and our lawyers were
5 preventing us from being able to do that.

6 But again, it was -- I mean
7 honestly it was never a question of like,
8 you know, whether something would be
9 illegal or not. In fact, Peter is not a
10 lawyer, I wasn't. I didn't really become
11 familiar with this until we got closer to
12 the YouTube acquisition.

13 Q. Okay. And let me follow up on
14 the instance live point you made.

15 You are referring to something,
16 I believe, that Susan Wojcicki --

17 A. She writes, she writes, "We are
18 working on the instant upload."

19 Q. And which page is that on, just
20 so we are on the same page?

21 A. 749.

22 Q. 749, okay. And so, one, if I
23 understood correctly, one of the
24 competitive advantages of YouTube was that
25 videos would be uploaded very quickly?

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2 A. Well, more quickly than we would
3 upload it.

4 Q. And I'm trying to understand if
5 Google's copyright compliance standards
6 affected the upload time of videos.

7 A. It absolutely did.

8 MR. MANCINI: Objection to form.

9 Q. How did Google's copyright
10 compliance standards affect the upload
11 time for videos?

12 A. Well, at least the view, that
13 was the perception at the time. The
14 perception was, because Google Video had
15 this group, Bhanu's group, proactively
16 viewing stuff, you know, whether it was
17 for a hate crime or porn or, you know,
18 copyright stuff, you know, it was an
19 extra -- it would take more time.

20 Q. So when a user went to upload a
21 video to Google Video, would it get -- the
22 video would be reviewed by Bhanu's group,
23 before the upload would be complete?

24 MR. MANCINI: Objection to form.

25 A. Yeah, I think so.

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A. Yes.

So to be clear, we did do proactive screening of copyright, from what it says here. So -- you had asked me about that earlier, but. I mean I wasn't involved with this, but we obviously did.

Q. Okay. So the existing policy at the time of this draft document was a zero tolerance on copyright as well as porn, violence and hate. And that was enforced with proactive screening before the video went live, correct?

A. Yeah. I have no reason to dispute that what this is is the current policy was not, you know, was not anything but the current policy back then.

Q. Okay. And the proposal is to keep rejecting full works -- to keep rejecting all porn, violence and hate, but to accept partial works up to ten minutes long and respond to take-down requests, correct?

A. That's what it says, yes.

Q. And was that proposal ever

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THE WITNESS: Would it be
possible to take a bio break?

MR. HOHENGARTEN: Absolutely.

THE VIDEOGRAPHER: The time is
2:20 p.m. We are going off the
record.

(Whereupon, there is a recess in
the proceedings.)

THE VIDEOGRAPHER: The time is
2:33 p.m. We are back on the record.

MR. HOHENGARTEN: We will mark
Exhibit 13, which is G00001-00925742
through 43.

(Eun Exhibit 13, document,
Bates stamped G00001-00925742
through 43, marked for
identification, as of this date.)

A. Okay.

Q. Exhibit 13 is an e-mail from
Hunter Walker to the video team, dated
May 17th, 2006.

Who is Hunter Walker?

A. It's Hunter Walk.

Q. I'm sorry, you're right. Who is

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2 Hunter Walk?

3 MR. MANCINI: Objection to
4 characterization of the document.

5 A. He used to be in the product
6 group on Google Video and has since become
7 the head of product at YouTube.

8 Q. And what does being the head of
9 product at YouTube entail, just briefly?

10 A. Basically, the role that Peter
11 Chane had at Google Video, Hunter now has
12 that for YouTube.

13 Q. And this e-mail describes Google
14 Video rolling out a web-based video
15 uploader with instant live, correct?

16 MR. MANCINI: Objection. The
17 document speaks for itself.

18 A. Apparently, yes.

19 Q. Do you recall that rollout of a
20 web-based video uploader with instant
21 live?

22 A. I don't.

23 Q. At the time, May 17th, 2006,
24 would the rollout of a web-based video
25 uploader with instant live be something

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2 we want to conduct our business? Is this
3 Googley?"

4 Q. And Sergey Brin --

5 A. Sergey.

6 Q. Sergey Brin is one of the
7 co-founders of Google, correct?

8 A. That's correct.

9 Q. What is GPS?

10 A. It's a product review where the
11 different functions come in and where you
12 make a presentation to EMG. So some of
13 the slides that we -- that you showed me
14 before would have, might have been
15 discussed at a GPS.

16 Q. Okay. And in this point 6 you
17 are describing a point that Sergey Brin
18 made at the last GPS, correct?

19 A. I don't recall the e-mail, and I
20 don't recall the particular GPS. In fact,
21 I don't recall Sergey talking that much
22 about video.

23 Q. Well, do you believe you didn't
24 author this e-mail?

25 A. No, no, no.

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2 News.

3 Q. And what about video, do you
4 also let content owners choose to opt out
5 of having their videos included on Google
6 Video?

7 MR. MANCINI: Objection to form.

8 A. So -- I don't work directly with
9 Google Video anymore, but on Google Video
10 it is now a search engine for video, and
11 anyone can always opt out.

12 Q. Okay.

13 A. So if they don't want to be
14 searched, they don't have -- they won't.

15 Q. And we will actually skip ahead
16 in time a little bit from what we have
17 been talking about, to after Google
18 acquired YouTube.

19 Can video content owners opt out
20 of participating, having their content
21 uploaded to YouTube?

22 MR. MANCINI: Objection to form.

23 A. Well, we have content
24 partnerships agreements. So they are the
25 ones who decide which content they want to

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2 Q. Do you know whether other people
3 in the Google Video team were included in
4 the decision-making at an earlier date?

5 MR. MANCINI: Objection to form.

6 A. Well, when I went to the, to do
7 the due diligence, I recall going over
8 with Susan Wojcicki. So she was on the
9 Google Video team.

10 Q. But did she learn about the
11 acquisition plans before you did?

12 A. I don't know.

13 Q. Did it strike you as strange
14 that you didn't learn about the plans
15 earlier than that?

16 MR. MANCINI: Objection to form.

17 A. No. Because again, it's --
18 Google's functionally run, and this was
19 something that our corporate development
20 group, it's sort of like the internal M&A
21 group was driving.

22 Personally, I wish that I had
23 been included a little bit sooner, but.

24 MR. HOHENGARTEN: Let's mark

25 Exhibit 17, which is G00001-00498728

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that you control as a partner.

And on those pages, again, if the partner elects to, because you can still be a partner and say, I don't want you to monetize, and a lot of non-profits, for example, do that. You can also put ads on the channel partner pages.

Q. Okay. But so there's the partner pages or partner channel pages?

A. Yes.

Q. The watch pages?

A. Yes.

Q. And there's also the search page, search results page and home results page of YouTube; is that right?

A. That's right. That's a good point, yes.

Q. And when the users come looking for content, whether it's from one of your content partners or somebody else, if they go to those pages in the process of looking for that content, they receive ads on those pages, correct?

MR. MANCINI: I just want to

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2 object, counsel, because the witness
3 has testified that he's not the most
4 knowledgeable about this subject. But
5 I'll allow to you ask the questions.

6 A. If we have sold an ad, they
7 could see advertising, yes.

8 Q. And when you say -- when this
9 chart says, "Monetizable, no," next to
10 "Content uploaded by general users," it's
11 not saying that somebody who searches for
12 that content wouldn't see an ad on the
13 search results page?

14 A. That's right.

15 Q. Now, for the content that is
16 monetizable, just still looking at
17 page 351, obviously, according to this
18 chart, the vast majority of views,
19 600 million compared to 4 million, are for
20 videos that are uploaded by general users;
21 is that right?

22 A. That's right.

23 Q. But those 600 million videos are
24 not monetizable, correct?

25 MR. MANCINI: Objection, asked